



Privacy, Property and the Commodification of Our Identities

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Property Rights as the Ultimate Solution

- Argument: extend property interest to personal data of individuals
- Why: data about individuals nowadays have become a key commercial asset
 - Why: individuals must be able to negotiate and bargain over the use of their data
- Result: data markets will be allowed to function more effectively
 - Result: less privacy invasion

Economic Arguments

- Protection of personal data is expensive and in short supply,
- whereas the collection and use of personal data is wasteful and inefficient;
 - Thus: we should consider market-oriented mechanisms based on individual ownership of personal data.
- Laudon, *Communications of the ACM*, 1996;
 - Mann, *First Monday*, 2000

Law and Technology Arguments

- In our society protection mechanisms based on private instruments gain priority;
- Vesting an ownership right would make it expressly clear that data subjects own personal data, not the business that collected them;
- Advances in technology make it easier to create and sustain the conditions for individual and personalized choices of data use.

Day-to-day Practice

- Customer data is a means of generating cash flow and silencing creditors
- Personal data changes hands or ‘ownership’, as part of merger-acquisitions, reorganizations and other strategic company movements
 - Companies may even believe that they have ownership rights in the personal data (compilations)
- Companies offer benefits in return for using personal data

Property Arguments and Human Right Dimension

- Property rights perspective does not fit the human rights perspective as adopted in, e.g., article 8(1) of the Rome Convention for the Protection of Human Rights and Fundamental Freedoms.
- Human right is a right of non-interference, not a right of positive entitlement.
- Privacy is attached to individuals by virtue of their personhood, and, as such, this right cannot be waived or transferred to others.
- Privacy is linked to constituting and maintaining a person's personal integrity. Thus, it is a non-commodifiable right.

However:

- Various developments testify to the growing influence of property thinking in the human rights domain
 - > property in personality
 - > property in human body parts
- Contractual freedom and human rights
 - Directive 95/46
- Distinguish Privacy from Personal Data

Would a Property Approach Solve Privacy Problems?

- Arguments made in legal literature:
 - > merely addresses problems in relation to private sector use;
 - > problems related to the concept of property itself;
 - > ‘take it or leave it’ terms under the threat of exclusion or denial of access to digital services.
 - > licensing all the necessary data would be costly, inconvenient, and time-consuming.
 - > framing the debate in terms of proprietary rights neglects the fact that what data subjects really seek: control
- And: What is our real privacy problem?

It is all about Identities

- Individual data versus combined data
- Ambient intelligence; RFID, personalised services
- Focus not so much on the individual data, but on the *effects* of the use of present-day technologies
 - Thus: focus on identities

Shifting in Our Attention

- Shift our attention from individual sets of personal data toward the statistical models, profiles and the algorithms with which individuals are assigned to a certain group or ‘identity’;
- data protection mechanisms must be structured along lines of control and visibility.

What We Need

- We need to know and understand how social and economic identities are constructed, influenced and used;
- We need instruments to know and to control how our ‘lives’ are ‘created’ .
- We do not need ownership of individual data.